

1 LAW OFFICES OF JOHN H. MITCHELL
 2 JOHN H. MITCHELL (CA State Bar # 41489); *johnmitchell@yahoocom*
 3 600 S. Main Street, Suite 900
 4 Orange, CA 92868
 5 Telephone: (714) 972-9000
 6 Facsimile: (714) 972-9299

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 8 Attorney for Defendants
 9 STEPHANIE LAMONS,
 10 individually and doing business as
 11 URBANISM, INC.

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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

WILLIAMS-SONOMA, INC., a California
 corporation,

Plaintiff,

v.

COCOON FURNISHINGS, INC., *et al*,

Defendants.

Case No. C-07-4017 JSW

**CASE MANAGEMENT CONFERENCE
 STATEMENT AND [PROPOSED] ORDER**

CMC Date: April 8, 2008
CMC Time: 1:30 pm.
Courtroom: 2, 17th Floor
Judge: Jeffrey S. White

Pursuant to the Court's Order of April 2, 2008, Defendants Urbanism and Stephanie Lamons (collectively, "Urbanism") submit their Case Management Statement separately and respectfully request that the Court adopt it as its Case Management Order.

1. Jurisdiction and Service. This is an action arising under the Lanham Act (15 U.S.C. §§ 1051, et seq.), the Copyright Act (17 U.S.C. §§ 101, et seq.), and under California statutory and common law. Defendants contend that venue is not proper in this district and that the Court does not have personal jurisdiction over the current parties. Plaintiff states it intends to serve other parties.

2. Facts. This action was brought by Williams-Sonoma, Inc. ("WSI") against Cocoon Furnishings, Inc. ("Cocoon Furnishings") on August 6, 2007 and against Stephanie Lamons individually and d/b/a Urbanism, Inc. (collectively, "Urbanism") on January 22, 2008. WSI settled

1 with Cocoon Furnishings, who WSI believes is a licensee of Urbanism, by way of a consent judgment
 2 and permanent injunction on March 3, 2008. At issue here is whether Urbanism initially engaged in
 3 practices that misrepresented the source and affiliation of its products. Also at issue is whether
 4 Urbanism was (i) using the Pottery Barn Marks on Urbanism's website to suggest there is a shared
 5 manufacturer for its products and for the Pottery Barn® products; (ii) using the Pottery Barn Marks in
 6 print and online advertising, on business cards, and in other promotional materials to suggest that
 7 Urbanism is selling Pottery Barn® products; (iii) displaying pages and images from Pottery Barn®
 8 catalogs in its showroom and (iv) making price comparisons that suggest that the "regular" price of
 9 Urbanism's products is the price charged by Pottery Barn for the same product.

10 At issue is whether Urbanism was encouraging licensees to infringe WSI's rights as herein
 11 above set forth. Whether Urbanism acted in concert with the purported licensees to create similarly
 12 misleading advertising support and use of Pottery Barn copyrights to promote their retail operations.

13 Urbanism denies these allegations and claims the following affirmative defenses:

14 1. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action
 15 against these answering Defendants, laches, unclean hands, accord and satisfaction, Statute of
 16 Limitations, speculative and uncertain damages.

17 2. Plaintiff is barred from recovery herein by reason of the contractual agreement by and
 18 between Plaintiff and the Defendant.

19 3. Plaintiff is barred from recovery herein in that each alleged cause of action was filed
 20 after the running of the Statute of Limitations.

21 4. Plaintiff is barred from recovery herein by reason of their breach of any contract
 22 alleged in the Complaint; their failure to comply with the terms of any such contract; their failure to
 23 meet the terms and conditions of consideration required of them; their retention of the benefits
 24 under the contract; their ratification of the contract as executed.

25 5. Plaintiff has not suffered any damages as alleged; but, if so, said damages are entirely
 26 speculative, uncertain and not subject to reasonable determination by a trier of fact.

27 6. The purported contract alleged in the complaint is unsupported by consideration or
 28 such consideration has materially failed thereby barring any and all relief requested by Plaintiff.

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2 7. Plaintiff lacks standing to sue upon the claims asserted.

3 8. In entering into the subject contract, plaintiff obligated itself to perform certain
4 conditions in order to enforce any rights thereunder. Plaintiff has failed to perform the conditions as
5 required, thereby discharging these answering Defendants from any obligations thereunder.

6 The principal factual issues in dispute are:

- 7 • whether Urbanism's alleged unlawful conduct is likely to cause confusion
8 among consumers about the source of Urbanism's or the licensees'
9 products;
- 10 • whether Urbanism's alleged unlawful conduct is likely to cause confusion
11 among consumers about the affiliation of Urbanism's or the licensees'
12 products;
- 13 • whether Urbanism's conduct is likely to cause confusion among consumers
14 about the sponsorship of Urbanism's or the licensees' products;
- 15 • whether the alleged unlawful conduct of Urbanism falsely communicates
16 that Urbanism's products originate from the same sources as Pottery Barn®
17 products;
- 18 • whether the alleged unlawful conduct of its licensees falsely communicates
19 that Urbanism's products originate from the same sources as Pottery Barn®
20 products;
- 21 • whether Urbanism acted in concert with its licensees regarding their alleged
22 unlawful conduct;
- 23 • whether Urbanism knew about the licensees' alleged unlawful conduct;
- 24 • whether Urbanism encouraged its licensees to engage in their alleged
25 unlawful conduct;
- 26 • whether Urbanism's alleged unlawful conduct impairs the distinctiveness of
27 the Pottery Barn Marks;
- 28 • whether Urbanism financially profited from the licensees' alleged unlawful

conduct;

- whether Urbanism's alleged unlawful conduct was willful;
- the amount of WSI's damages, if any;

3. Legal Issues. The principal legal issues in dispute are:

- whether Urbanism has infringed and is infringing the Pottery Barn Marks and WSI's copyrights;
- whether Urbanism contributorily infringed and is contributorily infringing the Pottery Barn Marks and WSI's copyrights;
- whether Urbanism induced and is inducing the infringement of the Pottery Barn Marks and WSI's copyrights;
- whether Urbanism has violated the Lanham Act by falsely designating the origin of its or its licensees' products;
- whether Urbanism has violated the Copyright Act as to WSI;
- whether Urbanism's conduct has diluted the Pottery Barn Marks;
- whether Urbanism's alleged conduct violates Cal. Bus. & Prof. Code § 17200;
- whether any infringement by Urbanism was willful, and if so, the amount of enhanced or statutory damages and attorneys' fees as may apply;
- whether an injunction should issue if the alleged infringements are established.

4. Motions. There are no pending motions. There will be motions for Change of Venue and for Preemption of Causes of Action.

5. Amendment of Pleadings. WSI may seek to amend its complaint to allege additional infringing practices by the present parties and/or by new parties based on discovery. Defendants propose a deadline of May 31, 2008, for the amendment of the pleadings.

6. Evidence Preservation. The parties conducted a conference pursuant to Fed. R. Civ. P. 26(f) on March 27, 2008. During that conference, Urbanism agreed to preserve relevant evidence.

7. **Disclosures.** The parties will timely exchange the initial disclosures pursuant to Fed.

1 R. Civ. P. 26(a)(1). The parties each reserve the right to supplement such disclosures as discovery
 2 continues.

3 8. Discovery. The parties agreed to the following discovery plan:

- 4 • *Discovery Needed* -- The parties anticipate written discovery followed by
 5 depositions. WSI may seek to depose alleged third party licensees
 6 regarding Urbanism's relationship to their allegedly unlawful conduct;
- 7 • *Bifurcation* -- Defendants request bifurcation of liability and damages and
 8 request bifurcation of discovery regarding liability and damages.
- 9 • *Interrogatories* -- The parties request that each party be allowed to serve a
 10 maximum of 25 interrogatories.
- 11 • *Depositions* -- Because there may be a large number of out of state
 12 witnesses offering only brief testimony, WSI requests that each party be
 13 allowed to take 70 hours of depositions instead of 10 depositions lasting up
 14 to seven hours each. Defendants request the usual limit of 10 depositions
 15 lasting up to seven hours each.
- 16 • *Requests for Admission and for Documents* -- There should be no limits on
 17 requests for admissions or document discovery requests.

18 9. Class Actions. This case is not a class action.

19 10. Related Cases. There are related cases known to plaintiff.

20 11. Relief. As is more completely detailed in its complaint, WSI seeks the following relief:

- 21 • A declaration that Urbanism has infringed, and is infringing, the Pottery
 22 Barn Marks and WSI's copyrights;
- 23 • A declaration that Urbanism has contributorily infringed, and is
 24 contributorily infringing, the Pottery Barn Marks and WSI's copyrights;
- 25 • A declaration that Urbanism has diluted, and is diluting, the Pottery Barn
 26 Marks;
- 27 • A declaration that Urbanism has falsely advertised its products and
 28 competed unfairly with WSI;

- 1 • An order permanently enjoining Urbanism and its agents, servants,
2 employees, and all persons acting under its permission and authority from
3 falsely advertising its products, or falsely identifying the origin of its
4 products;
- 5 • An order that during the pendency of this action, all Pottery Barn® catalogs
6 in the possession of Defendant be impounded and that all such all catalogs
7 and other advertising materials wrongfully using the Pottery Barn Marks
8 and all data, materials, or other means of creating such materials be
9 destroyed upon the entry of final judgment;
- 10 • Damages arising out of Urbanism's infringement and/or dilution of the
11 Pottery Barn Marks in an amount to be determined at trial, including (i)
12 disgorgement of Urbanism's profits that are attributable to its illegal acts;
13 (ii) WSI's actual damages; and (iii) WSI's lost profits.
- 14 • Enhanced damages and pre-judgment and post-judgment interest in an
15 amount to be determined at trial;
- 16 • Attorney's fees and other costs of suit;
- 17 • Such other costs and further relief which the Court may deem just and
18 proper.
- 19 • Defendant request denial of all relief requested.

20 12. Settlement and ADR. The parties have agreed to mediation through the court
21 sponsored ADR program and will file their ADR election to that effect. The parties have discussed
22 exchanging information that would be necessary to have informal settlement discussions.

23 13. Consent to Magistrate Judge For All Purposes. WSI did not consent to the assignment
24 of this case to a United States Magistrate Judge and filed a request for reassignment to a United States
25 District Judge on October 3, 2007. The case was reassigned to Judge White on October 4, 2007.

26 14. Other References. The parties do not believe the case is suitable for reference to
27 binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation. The parties
28 request that this Court handle all pretrial and trial issues.

1 15. Narrowing of Issues. The parties are not aware at this time of any issues that can be
 2 narrowed by agreement or by motion.

3 16. Expedited Schedule. The parties at this time do not believe this is the type of case that
 4 can be handled on an expedited basis with streamlined procedures.

5 17. Scheduling. The parties agree to the discovery limitations set forth in the Federal Rules
 6 of Civil Procedure. Defendant request the to the following schedule and request a trial date in March
 7 2009:

Fact discovery cut-off	August 27, 2008
Expert disclosures	September 18, 2008
Rebuttal expert disclosures	October 2, 2008
Expert discovery cut-off	October 23, 2008
Last day for hearing on dispositive motions	December 9, 2008
Last day to serve motions <i>in limine</i>	One month after decision
Last day to oppose motions <i>in limine</i>	10 days later
Last day to file proposed joint pretrial order and other materials required by Court's standing order	Six days later
Pretrial conference	March 5, 2009
Trial	March ___, 2009

18. Trial. Defendants do not know how long it will take plaintiff to present its case.

19. Disclosure of Non-party Interested Entities or Persons. WSI has filed the Certification
 of Interested Entities or Persons as required by Civil Local Rule 3-16. WSI certifies that other than
 the named plaintiff there is no person, association of persons, firm, partnership, corporation (including
 parent corporations) or any other entity to report who would have (i) a financial interest in the subject
 matter in controversy or in a party to the proceeding, or (ii) a non-financial interest in that subject
 matter or in a party that could be substantially affected by the outcome of this proceeding.

20. Interested entities or persons are protected by agreements including confidentiality. However,

1 defendants are informed and believe that plaintiff has obtained all information as a part of its
2 settlement with other parties and knows the identity of all persons and entities that could be
3 substantially affected by the outcome of this proceeding.

4 20 Such other matters as may facilitate the just, speedy and inexpensive disposition of this
5 matter. The parties are not aware of any other matters that may facilitate the disposition of this matter.

6 DATED: April 18, 2008

Respectfully submitted,

LAW OFFICES OF JOHN H. MITCHELL

By:

John H. Mitchell
Attorneys for Defendants STEPHANIE LAMONS AND
URBANISM, INC.

[PROPOSED] CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order are hereby adopted by the Court as the Case Management Order for the case. The parties shall comply with this Order.

IT IS SO ORDERED.

Dated:

Honorable Jeffery S. White
United S District Judge